

## § 2540.215

### **§ 2540.215 What should a program participant, staff members, or beneficiary do if the individual believes he or she has been subject to illegal discrimination?**

A program participant, staff member, or beneficiary who believes that he or she has been subject to illegal discrimination should contact the Corporation's Office of Civil Rights and Inclusiveness, which offers an impartial discrimination complaint resolution process. Participation in a discrimination complaint resolution process is protected activity; a grantee is prohibited from retaliating against an individual for making a complaint or participating in any manner in an investigation, proceeding, or hearing.

[73 FR 53760, Sept. 17, 2008]

EFFECTIVE DATE NOTE: At 73 FR 53760, Sept. 17, 2008, § 2540.215 was added, effective Nov. 17, 2008.

### **§ 2540.220 Under what circumstances and subject to what conditions are participants in Corporation-assisted programs eligible for family and medical leave?**

(a) *Participants in State, local, or private nonprofits programs.* A participant in a State, local, or private nonprofit program receiving support from the Corporation is considered an eligible employee of the program's project sponsor under the Family and Medical Leave Act of 1993 (29 CFR part 825) if—

(1) The participant has served for at least 12 months and 1,250 hours during the year preceding the start of the leave; and

(2) The program's project sponsors engages in commerce or any industry or activity affecting commerce, and employs at least 50 employees for each working day during 20 or more calendar workweeks in the current or preceding calendar year.

(b) *Participants in Federal programs.* Participants in Federal programs operated by the Corporation or by another Federal agency will be considered Federal employees for the purposes of the Family and Medical Leave Act if the participants have completed 12 months of service and the project sponsor is an employing agency as defined in 5 U.S.C 6381 *et seq.*; such participants therefore will be eligible for the same family and

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medical leave benefits afforded to such Federal employees.

(c) *General terms and conditions.* Participants that qualify as eligible employees under paragraphs (a) or (b) of this section are entitled to take up to 12 weeks of unpaid leave during a 12 month period for any of the following reasons (in the cases of both paragraphs (c)(1) and (2) of this section the entitlement to leave expires 12 months after the birth or placement of such child): (1) The birth of a child to a participant;

(2) The placement of a child with a participant for adoption or foster care;

(3) The serious illness of a participant's spouse, child or parent; or

(4) A participant's serious health condition that makes that participant unable to perform his or her essential service duties (a serious health condition is an illness or condition that requires either inpatient care or continuing treatment by a health care provider).

(d) *Intermittent leave or reduced service.* The program, serving as the project sponsor, may allow a participant to take intermittent leave or reduce his or her service hours due to the birth of or placement of a child for adoption or foster care. The participant may also take leave to care for a seriously ill immediate family member or may take leave due to his or her own serious illness whenever it is medically necessary.

(e) *Alternate placement.* If a participant requests intermittent leave or a reduced service hours due to a serious illness or a family member's sickness, and the need for leave is foreseeable based on planned medical treatment, the program, or project sponsor may temporarily transfer the participant to an alternative service position if the participant: (1) Is qualified for the position; and

(2) Receives the same benefits such as stipend or living allowance and the position better accommodates the participants recurring periods of leave.

(f) *Certification of cause.* A program, or project sponsor may require that the participant support a leave request with a certification from the health care provider of the participant or the

participant's family member. If a program sponsor requests a certification, the participant must provide it in a timely manner.

(g) *Continuance of coverage.* (1) If a State, local or private program provides for health insurance for the full-time participant, the sponsor must continue to provide comparable health coverage at the same level and conditions that coverage would have been provided for the duration of the participant's leave.

(2) If the Federal program provides health insurance coverage for the full-time participant, the sponsor must also continue to provide the same health care coverage for the duration of the participant's leave.

(h) *Failure to return.* If the participant fails to return to the program at the end of leave for any reason other than continuation, recurrence or onset of a serious health condition or other circumstances beyond his or her control, the program may recover the premium that he or she paid during any period of unpaid leave.

(i) *Applicability to term of service.* Any absence, due to family and medical leave, will not be counted towards the participant's term of service.

**§2540.230 What grievance procedures must recipients of Corporation assistance establish?**

State and local applicants that receive assistance from the Corporation must establish and maintain a procedure for the filing and adjudication of grievances from participants, labor organizations, and other interested individuals concerning programs that receive assistance from the Corporation. A grievance procedure may include dispute resolution programs such as mediation, facilitation, assisted negotiation and neutral evaluation. If the grievance alleges fraud or criminal activity, it must immediately be brought to the attention of the Corporation's inspector general.

(a) *Alternative dispute resolution.* (1) The aggrieved party may seek resolution through alternative means of dispute resolution such as mediation or facilitation. Dispute resolution proceedings must be initiated within 45 calendar days from the date of the al-

leged occurrence. At the initial session of the dispute resolution proceedings, the party must be advised in writing of his or her right to file a grievance and right to arbitration. If the matter is resolved, and a written agreement is reached, the party will agree to forego filing a grievance in the matter under consideration.

(2) If mediation, facilitation, or other dispute resolution processes are selected, the process must be aided by a neutral party who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the matter through a mutually achieved and acceptable written agreement. The neutral party may not compel a resolution. Proceedings before the neutral party must be informal, and the rules of evidence will not apply. With the exception of a written and agreed upon dispute resolution agreement, the proceeding must be confidential.

(b) *Grievance procedure for unresolved complaints.* If the matter is not resolved within 30 calendar days from the date the informal dispute resolution process began, the neutral party must again inform the aggrieving party of his or her right to file a formal grievance. In the event an aggrieving party files a grievance, the neutral may not participate in the formal complaint process. In addition, no communication or proceedings of the informal dispute resolution process may be referred to or introduced into evidence at the grievance and arbitration hearing. Any decision by the neutral party is advisory and is not binding unless both parties agree.

(c) *Time limitations.* Except for a grievance that alleges fraud or criminal activity, a grievance must be made no later than one year after the date of the alleged occurrence. If a hearing is held on a grievance, it must be conducted no later than 30 calendar days after the filing of such grievance. A decision on any such grievance must be made no later than 60 calendar days after the filing of the grievance.

(d) *Arbitration—(1) Arbitrator—(i) Joint selection by parties.* If there is an adverse decision against the party who filed the grievance, or 60 calendar days after the filing of a grievance no decision has been reached, the filing party may submit the grievance to binding